

07.01.2021
s.das
Ct. No. 28
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C.O. 1206 of 2018
(Via Video Conference)

Smt. Anjali Sardar
Vs.
M/s. Singh Projects Private Ltd.

Ms. Anyasha Das
.... for the petitioner

Mr. Ayan Banerjee
Mr. Arijit Bhowmick
Ms. Debasree Dhamali
.... for the opposite party

Petitioner assails order dated 19th April, 2018 passed by the learned Civil Judge (Junior Division), 1st Court at Sealdah in Ejectment Suit No. 161 of 2007. By the said order learned Trial Court rejected the application filed by the petitioner under Section 151 of the Code of Civil Procedure.

It is submitted by the learned Counsel appearing for the petitioner that the petitioner is a tenant in respect of the premises in question and had filed an application under Section 7(2) of the West Bengal Premises Tenancy Act, 1997 before the learned Trial Court for determination of the rent payable by him. In course of adducing evidence before the learned Trial Court in support of such application, cross-examination of the petitioner was abruptly concluded by the Court who disposed of the

application ex parte without giving an opportunity to the petitioner/defendant of being heard. The petitioner/defendant filed an application under Section 151 of the Code of Civil Procedure for recalling the said order dated 02.04.2014 which again was considered and rejected by the learned Trial Court on the ground that as the application under Section 7(2) of the 1997 was finally disposed of, the said order could not be revised or recalled by the learned Trial Court later on.

Learned Counsel appearing for the opposite party/plaintiff opposes the submission of the petitioner/defendant and submits that the petitioner/defendant chose not to continue her evidence before the learned Trial Court and did not bother to take steps for adducing evidence on two consecutive dates for which the learned Trial Court was left with no other alternative but to dispose of the application under Section 7(2) of the Act of 1997 ex parte.

It transpires from the copy of the ordersheet placed before this Court that in support of the petition under Section 7(2) of the Act of 1997, the petitioner who is the tenant/defendant in respect of the premises in question adduced evidence and was cross-examined in part as P.W. 1 till 03.12.2013. On consecutive dates i.e. 02.04.2014, 05.05.2014 and

13.06.2014 there is no reflection in the ordersheet as to whether the petitioner/defendant was ready to depose before the Court and also whether such opportunity was granted to her by the Court. On 23.07.2014 the Court disposed of the application under Section 7(2) of the 1997 Act ex parte holding the petitioner/defendant to be the defaulter in payment of rent and directing the petitioner/defendant to pay arrear rents. The application under Section 151 of the Code of Civil Procedure filed by the petitioner/defendant was also rejected by the learned Trial Court vide order dated 19.04.2018 with an observation that as the order under Section 7(2) of the Act was finally disposed of such an order could not be could not be revised or recalled by way of an application under Section 151 of the Code of Civil Procedure.

In my considered view, there is no reflection in the order of the learned Trial Court as to why the evidence of the petitioner/defendant was abruptly closed and in fact, the order is silent as to whether the evidence was actually concluded/closed. Learned Counsel appearing for the petitioner/defendant submits that the petitioner/defendant has deposited the arrear rents as well as current rents before the Court and there is no rent due.

Under such circumstance, I am inclined to hold that the petitioner should be allowed to depose before the learned Trial Court to substantiate her claim that she is not a defaulter in payment of rent. It is also submitted that cross-examination of the petitioner with regard to the petitioner under Section 7(2) of the Act of 1997 is pending.

Accordingly, the order dated 19.04.2018 be set aside and the application under Section 7(2) of the 1997 be restored enabling the petitioner to adduce further evidence before the learned Trial Court.

As the title suit is pending before the learned Trial Court for a pretty long time, the learned Trial Court shall make all endeavours to complete the evidence of the petitioner/defendant on a single day and dispose of the application under Section 7(2) of the Act as expeditiously as possible preferably within a period of two weeks from the next date fixed for evidence without granting unnecessary adjournment to either of the parties.

With the above observations, this application is disposed of.

All parties are to act on the website copy of this order on usual undertaking.

(Suvra Ghosh, J.)